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CONFLICT TERMINATION - -
TRANSITIONING FROM WARRIOR TO CONSTABLE:
A PRIMER

BY

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United States Army

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CONFLICT TERMINATION - -

TRANSITIONING FROM WARRIOR TO CONSTABLE:

A PRIMER

AN INDIVIDUAL STUDY PROJECT

by

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During low intensity conflicts and contingency operations, the commander transitions from combat to stability. In doing so, the warrior becomes a constable in civil military operations. This study project offers a primer for describing the many and varied issues a commander may confront when transitioning on the continuum from a combat or crisis phase to a stability and nation building phase. The paper will review United States experience in four low intensity conflicts: Power Pack (Dominican Republic), Urgent Fury (Grenada), Just Cause and Promote Liberty (Panama), and Desert Storm and Provide Comfort (Kuwait and Kurdish Refugees in northern Iraq). In addition to identifying issues an Army commander may face, the paper discusses the commander's responsibilities and roles under International Law to provide for stabilization of civil affairs. It shows why the commander may not have traditional civil affairs assets available to assist in achieving the mission. It concludes that Army commanders will be required to conduct humanitarian, law and order, and constabulary duties when transitioning from combat to stability immediately following combat, perhaps for weeks before guidance and instruction is provided by appropriate governmental or international authority. This study suggests a methodology for commanders in addressing their responsibilities during the stability phase. The appendices to the primer discuss issues relating to the stability mission and provide sample documents.

TABLE OF CONTENTS

	Page
ABSTRACT.....	ii
TABLE OF CONTENTS.....	iii
INTRODUCTION.....	1
FUTURE MILITARY OPERATIONS.....	3
THE COMMANDER.....	5
U.S. EXPERIENCES IN LOW INTENSITY CONFLICTS.....	7
POWER PACK.....	8
URGENT FURY.....	12
JUST CAUSE and PROMOTE LIBERTY.....	14
DESERT STORM and PROVIDE COMFORT.....	17
CIVIL AFFAIRS.....	21
OBSERVATIONS AND CONCLUSION.....	27
APPENDIX A.....	34
APPENDIX B.....	52
APPENDIX C.....	62
ENDNOTES.....	63
BIBLIOGRAPHY.....	74

Conflict Termination - - Transitioning From
Warrior to Constable, A Primer

"War is undertaken for the sake of peace, which
is its only lawful end and purpose."

James Kent¹

Introduction

This paper seeks to provide military leaders with a practical primer outlining major decisions they will face during low intensity conflicts² and contingency operations³ when transitioning on the continuum from hostilities or crisis to stability.⁴ The primer focuses on the stability phase. During this phase, the commander fosters conditions that permit orderly change from a combat or crisis environment to an environment that allows the restoration of legitimate governments or assists an international organization that will take charge of those responsibilities as directed by the National Command Authorities, United Nations or other appropriate authority. This paper will not address what appropriate United States or international agencies should be involved or what their post conflict responsibilities should be. Rather this primer discusses the many issues the ground commander will confront. Generally, this period come within the first week following termination of conflict.

The primer will supplement traditional civil affairs' doctrine and will focus on stability lessons experienced in four recent low intensity conflicts - - Power Pack, Urgent Fury, Just Cause and Desert Storm - - and their resulting stability phases. During the transition from combat to stability, the commander becomes a constable in civil military operations. Some will view post conflict planning as no significant concern. However, because of the current force structure, laws, and budgetary considerations, civil affairs assets may not be available or adequate during the conflict - stability phases. While the primer does not cite examples of conflicts with developed countries, the primer will be as applicable to the developing countries of Eastern Europe as it is to those found in Africa. Additionally, the principles presented in this primer are also applicable to developed countries.

Normally the military planners and operators focus on transitioning from peace to war. This primer examines a war to peace scenario, wherein stability functions become critical. Therefore, the primer seeks to educate commanders about the importance of post conflict stability operations. It will discuss the commander's responsibilities and roles, suggest a methodology on how to approach these responsibilities, and provide useful examples of solutions to problems commanders will face during this stability phase. Those solutions will be found in the appendices following the text.

Future Military Operations

"New conditions require...new and imaginative methods. Wars are never won in the past."

General Douglas MacArthur

War is not what it used to be. Although the United States still faces and prepares to counter the threat of conventional conflicts, it is much more likely that future American military operations will be low intensity conflicts and peacetime contingency operations. Our recent history of conflict involvements, newly imposed congressional oversight, and the post-Vietnam reluctance to commit United States combat forces abroad support this view.

In a world less driven by an immediate, massive threat to Europe or the danger of global war, the need to deal with regional contingencies will be the prime concern of United States military strategists.⁶ Even though the Cold War has ended, the fact nonetheless remains that there have been an average of 20 - 25 conflicts and civil wars raging in the Third World during every year since 1945. The United States has had to use military force more than 200 times since the end of World War II to protect its allies, its citizens, and its strategic interests in areas where no element of Soviet bloc forces were involved.⁷ So the prospects for future low intensity conflicts and contingency operations are indeed great.

Recent contingency operations indicate that victory is

seldom in doubt for the United States. The objectives are clear. However, the ways and means to fully achieve the political and military objectives have become uncertain. We will minimize collateral damage by our tactics and sophisticated weapons, but the infrastructure of the country may be damaged or destroyed. Public utilities, food distribution, medicine and medical care, and law and order are just some of the many governmental functions that will be severely damaged or rendered insufficient during a crisis or armed conflict. The military commander under the law of land warfare is responsible for the welfare and care of the domestic population, combatants, and others in the area of operation until the commander can transfer that responsibility to a responsive government or international organization.

The post-operational environment is also characterized by a civilian population unwilling or unable to address immediate reconstruction requirements. The commander is responsible for law and order and humanitarian assistance. The commander uses civil affairs assets to satisfy these responsibilities. In low intensity conflicts, the commander will most likely begin the stability phase even before the combat stage has been completed. While American and international relief organizations are competent, they are generally unable to organize quickly and are designed to work within a viable infrastructure. Therefore, the military commander's involvement will not end with cessation of hostilities; it will continue until the National Command Authorities, United Nations, or other authority is able to

provide guidance. Previous post-conflict experiences indicate that the government does not interact well at the interagency level. On occasions the military and State Department were not fully cognizant of each other's capabilities. The most immediate and demanding problem the ground commander will face is establishing order. The military has a long history of restoring order better than anyone else. It has reduced infant mortality (Operation Provide Comfort), restored schools and an education system in Grenada (Operation Urgent Fury). What is clear from the study of the following four low intensity conflicts is that restoration of order must occur prior to reconstruction of the infrastructure. The commander has responsibility to restore order. This primer tells him how best to do this labor of peace.

The Commander

"Let it be your pride...to show all men everywhere not only what good soldiers you are, but also what good men you are."

Woodrow Wilson. Speech in
Pittsburgh, PA, Jan 29, 1916

Having won the battles and achieved the objectives, the commander must turn his attention to restoration of order. He is responsible for the humanitarian care of the local population, combatants, and others in the area of operation. The commander must consider more than the effect of traditional law of war on his operation. He must also know the requirements of domestic

law, such as security-assistance and fiscal statutes; obligations flowing from alliances and agreements such as mutual defense treaties; and host-nation support agreements.⁸ Failure to be aware of and comply with these legal and policy demands could result in embarrassment for the commander, failure to achieve the political objectives of the military effort, loss of the hearts and minds of the populace, unfavorable response from the world community, and prolonging the stay of forces in the area of operation.

It is United States policy that the law of land warfare applies to low intensity conflicts - whether they are identified as revolutions, insurgencies, guerrilla operations, terrorism, or related acts of violence.⁹ The commander must care for the sick and wounded of the belligerent, respect and account for the personal property and the public properties of the belligerent,¹⁰ and likewise respect and protect the persons and personal property of neutral parties in the territory of the conflict.¹¹

The real question for commanders is "What am I legally required to provide?" - not just what we want our humanitarian policy to be. In war or peace, the answer to this question is defined by domestic and international law. But for the "neither - peace - nor - war" situation the legal obligations and limitations are vague.

In war, the United States policy is to ensure that the "law of war and obligations of the U.S. government under that law are observed and enforced by the U.S. Armed Forces."¹² Compliance

with this standard requires adhering to the Geneva and Hague Conventions.¹³ Because the "commander alone is responsible for everything his unit does or fails to do,"¹⁴ the commander must be conscious of the requirements. For these reasons, the civil affairs mission has been established for the restoration of governmental infrastructure in civil military operations. In peace, federal statutes, treaties, host nation agreements, and interagency memorandums of agreement define responsibilities and limitations for the commander.

The more difficult situation for the commander is the "neither - peace - nor - war" situation. When the United States provides economic and military assistance to governments or insurgents involved within international conflicts, the obligations of Protocol II to the Geneva Convention are invoked.¹⁵ In addition to triggering Protocol II by involvement, the United States' policy favors compliance by the broad wording of Department of Defense Directive 5100.77 and the positive policy of the United States Department of State encouraging compliance regardless of the characterization of the conflict.¹⁶ Therefore the general principles of international humanitarian law apply to "neither - peace - nor - war" situations.

United States Experiences in Low Intensity Operations

For a fuller understanding of the many and varied issues a commander will face in low intensity operations during the period

of transitioning from combat or crisis to stability and nation building, United States experiences during Power Pack, Urgent Fury, Just Cause and Promote Liberty, and Desert Storm and Provide Comfort provide abundant examples. Since all low intensity conflicts have some similar characteristics, the post-conflict transitioning to stability offer some common issues. But obviously the commander's problem-solving was tailored to the specific characteristics of the conflict, military and political objectives, and the type of resources available. But what these four operations do reflect is that the ground commander will be required to begin the stability and nation building actions using his combat assets once the bullets are no longer flying or the crisis has been stopped.

Power Pack

"Clean up the streets, hell -
we came here to fight."

Unknown soldiers

Power Pack, the United States intervention in the Dominican Republic, began in April 1965 when more than 500 marines came ashore at Polo Field. It was a contingency and peace-keeping operation. Whereas fighting lasted for two months (21 May 1965, when the cease-fire went into effect), American forces remained in the Dominican Republic until September 1966, or 16 months later, to restore order.

As United States military forces awaited resolution of the crisis, several adjustments had to be made. Additional troops and supporting units well beyond those specified in the original contingency plans had to be prepared, deployed, and provided appropriate and adequate supplies to address the unforeseen complexity of the peace-keeping mission. As these additional troops arrived, they observed and experienced the "just plain squalor" of Santo Domingo, the capital city. They were appalled by the sight of naked children playing in mud puddles, garbage and dead bodies littering the streets, electrical power and telephone service working only sporadically, scarcity of food and water, and the medical needs of a large population. More alarming was the experience of the 3d Brigade of the 82nd Airborne Division when they began receiving rebels who were "coming in bunches." Not knowing what to do with the rebels or unaware of their legal status as detainees or prisoners of war, the American troops turned the first group of detainees over to the junta, who summarily executed them. Learning from this experience, additional military police, especially soldiers who could speak Spanish, were requested. Procedures to correctly establish the legal status of detainees were implemented, and detainee collection points were established.¹⁷

While Washington, and specifically the Department of State, was searching for a political solution to the crisis, trained combat soldiers were engaged in a wide variety of activities normally performed by civilian agencies and officials. These

stabilizing or restoration-to-order missions occurred at the same time American soldiers were required to subdue sniper fire or intervene in fire fights between the warring parties.¹⁸

In May, a bonafide civil military action program was initiated. United States marines and soldiers began distributing essential food items to both sides of the conflict; over 15,000 tons of food and 15,000 pounds of clothing were distributed. The soldiers and marines were unfamiliar with civic action programs. Thus they lost all accountability over distribution. Large crowds stormed the distribution centers, and often several members from a single family would walk away with a full family allotment. As soldiers gained experience, the abuses were curbed, especially through ration card controls. Free American medical clinics enjoyed banner business and medical supplies quickly ran out. Medical supplies were rapidly replenished as the American Embassy expedited this humanitarian request.

While food and medicine were being dispensed, United States military engineers worked to restore power and water to Santo Domingo and to repair the city's incinerator so that the garbage collection could resume. For the most part, the combat engineers lacked the equipment and the skill to repair and operate large facilities such as waterworks, incinerators, and power plants. But with the assistance of civilian and military experts, they managed to put the plants in operation. Probably the most frustrating mission for the engineers was the requirement to take charge of collecting Santo Domingo's garbage.¹⁹

To support this huge civil military action program, the 42d Civil Affairs Company from Fort Gordon, Georgia, arrived during the second month of the deployment and provided guidance to the United States command. While the unit provided outstanding guidance, its assets were not sufficient for the stability mission. Combat soldiers had to be used.

Organized along functional teams, the civil affairs units had mixed success. Although the Dominican governmental infrastructure had collapsed, the United States command did not assume the powers of the local government. As a result, the status of United States forces vis-a-vis international law, treaties, and other agreements remained uncertain. In another example of the confused status, the Dominican minister of health, perhaps fearing the consequences of cooperating with the American military, refused to provide assistance to the Public Health Team. The Public Education Team did temporarily succeed in reopening the elementary schools for a short period, but they soon closed again. The high schools never were reopened. The Economic Team met with local bankers to restore financial operations; but after two weeks, the United States Embassy forced the teams out. Also confusion and redundancy among United States efforts occurred. Often the United States Department of State officials began work on a problem that the United States military was already addressing. Communication and coordination between the two was often lacking.²⁰

Although many problems occurred during the peace-keeping

effort because soldiers untrained in civic action programs were required to perform the very basic functions of civilian governmental infrastructure, the humanitarian effort did assist in stabilizing the country. It significantly helped to win the "hearts and minds" of the Dominican people.²¹

Urgent Fury

**"Statesmanship, diplomacy, economics,
and warfare just can't be separated
from one another."**

William J. Lederer and

Eugene Burdick, The Ugly American

On October 25, 1983, an assault force of United States marines and soldiers initiated Operation Urgent Fury and invaded the island of Grenada. The United States launched this contingency operation to protect American citizens then on the island, to forestall further chaos and to assist in the restoration of conditions of law and order and of governmental institutions to the island of Grenada.²² The conflict lasted eight days. However, the post-conflict restoration continued for another eighteen months.

While American soldiers and marines were engaging the combat mission, commanders began to address the restoration of lawful government mission. On October 28, the first elements of the only active civil affairs battalion, the 96th, arrived in Grenada and were immediately confronted with property control, dislocated

civilians, civilian labor force requirements, food distribution, and non-combatant evacuation needs of the local population. These problems were caused by the breakdown of the government's infrastructure. Approximately three days later, civil affairs personnel were coordinating with the American Agency for International Development concerning food and fuel distribution. However, the stability tasks were more than the one active duty civil affairs unit could handle alone.²³

When Urgent Fury began, 97 percent of all the civil affairs assets was in the reserves²⁴. Because of the suddenness of Urgent Fury and the lack of mobilization of the reserve units, there were no reserve units available to the ground commander. What occurred was a volunteer effort by individual civil affairs reservists who fulfilled active duty periods by rotating out and being replaced by other individual reservists. The first of the reserve civil affairs assets, however, did not arrive until after November 2nd, eight days into the operation.²⁵

Soldiers and commanders, as during Power Pack, were again confronted with the disposition of prisoners of war, providing medical care, food distribution, and claims adjudication.²⁶ Also to restore stability, educational facilities were rebuilt,²⁷ water and sewage systems were restored, combat damage was paid for,²⁸ and displaced persons were relocated. A host of governmental missions replaced the civilian infrastructure that was destroyed during the conflict. Grenadans also frantically sought information from the United States command: Where could

they find new employment? How could they gain access to restricted areas to rebuild homes and businesses? Could missing persons be located? Who was being detained? Who had been medically evacuated? To restore stability, United States military commanders needed to accumulate and transmit massive amounts of accurate information.²⁹

During the post combat phase, active duty soldiers and reserve civil affairs assets accomplished such diverse missions as assisting the Minister of Agriculture by spraying crops and the Ministry of Labor by establishing a fair and equitable wage scale for labor; repairing telephone services; assisting in plumbing, electrical, and masonry and carpentry projects; as well as restoring tourism³⁰ and revamping the communist installed education curriculum.³¹

Operations Just Cause and Promote Liberty

"If we spend a fraction of the time setting things up that we knock down, we would all come out of this looking better."

Unknown General Officer

On December 20, 1989, American military forces launched Operation Just Cause by invading the country of Panama. Its objectives were the removal of Panama's military dictator, General Manuel Noriega; the restructuring of the Panamanian Defense Force; and the reinstatement of Panama's elected

government. After a brief period of fighting, the Panamanian forces were defeated and Noriega surrendered to United States forces.

On February 1, 1990, Operation Just Cause terminated and Operation Promote Liberty began. However, prior to the termination of the combat phase of Just Cause, United States Special Operations Command recognized that additional forces and resources were required to achieve our political and military objectives when transitioning from combat to stability phases. These additional forces were instrumental in assisting combat soldiers during the later transition from stability to nation-building. In January 1990, the stability and nation-building planning phases began for Operation Promote Liberty. In early January the United States Special Operations Command recommended, and the Commander-in-Chief, United States Southern Command, approved the creation of the United States Military Support Group - Panama to oversee all special operations, civil affairs, supporting psychological operations, and combat support and combat service support during the nation building phase. Individual volunteer reservists came on active duty for periods of from 31 to 139 days to support the civil affairs needs. However, the majority of them served 31-day tours.³²

Just Cause lasted some forty days, while Promote Liberty is now over two year old and is ongoing. During Just Cause, and probably in future contingency operations, there was no clear demarcation from the combat phase to the stability phases. The

latter is driven by the need to reestablish law and order and provide nation assistance. In Panama, as in the Dominican Republic and Grenadan interventions before it, the stability phase did not begin after the combat phase, but began during it, well before adequate numbers of civil affairs specialists had arrived on the scene and while military police and soldiers were still conducting their battlefield missions.³³ As a result, combat units often found themselves performing civil affairs, constabulary duties, and security patrols and other noncombat missions.³⁴

Once again during the stability phase soldiers identified prisoners of war; handled the disposition of displaced persons;³⁵ restored order; enforced curfews; cleaned up of garbage in slum neighborhoods;³⁶ acquired and distributed food, water,³⁷ and clothing; coordinated province turnover; evacuated weapons; restored law and order;³⁸ paid claims; and sorted out combat and non-combat damage.³⁹ Additional duties included delivery of international humanitarian assistance; providing transportation for people, food stuffs, and supplies; conducting information programs; and conducting joint police patrols and police training for the eventual return to normal Panamanian law enforcement.⁴⁰

Some combat units had anticipated performing such duties on a temporary basis, but few had actually prepared for this eventuality.⁴¹ The sudden transition from combat to stability duties, with the latter's restrictive rules of engagement and political constraints, caused frustration and, before rigid fire

discipline could be imposed, sometimes tragic incidents.⁴²

American units that had been stationed in Panama long enough to know the people, their behavior, their customs and to become familiar with the terrain tended to make the transition from warrior to constable with greater ease and effect than those units deployed exclusively for Just Cause.

Initial civil affairs, civil - military, constabulary, stability and nation-assistance missions did not effectively coordinate their work. To provide centralized direction and coordination to the military's efforts in these areas, the military support group was set up in mid-January and placed under Joint Task Force Panama, which had been reactivated with the redeployment of the XVIII Airborne Corps. The nation assistance effort, Promote Liberty, continues today.⁴³

Operations Desert Storm and Provide Comfort

"If it weren't for the 'inefficiencies' of the
U.S. Army, the UN relief effort would
have been totally impossible."

Unknown Civilian Relief Worker⁴⁴

In August 1991 during Operation Desert Shield, President Bush committed American force to the defense of Saudi Arabia and the restoration of Kuwait's legitimate government. Immediately, civil affairs planning began and a three-phase civil affairs approach was adopted to meet the two political and military

objectives. The phases were pre-hostilities, hostilities (or a forced Iraq withdrawal from Kuwait), and post-hostilities.⁴⁵

Following failed diplomatic attempts to force Iraq's Saddam Hussein to withdraw from Kuwait, Operation Desert Shield became Operation Desert Storm with the commencement of the Allied air campaign on January 17, 1992. Although civil affairs assets were identified as required assets for the theater, they were not deployed during the pre-hostilities phase as envisioned in the plan. It was not until late December that United States Central Command placed civil affairs units on the call-up list. This may have occurred, as some assert, because the Commander-In-Chief was more concerned with getting warfighting assets in the theater first, or because neither the American Central Command nor United States Third Army appreciated the civil affairs requirements for Kuwait and the rest of the theater.⁴⁶ However, by mid February, the Department of Defense began again to address civil affairs issues and activities for Iraq and reserve units began to arrive.⁴⁷ On February 24th, the ground campaign began. It lasted 100 hours.

Once civil affairs units and assets did arrive in the theater, they provided needed crowd control by keeping civilians, refugees, and surrendering enemy prisoners of war out of the way of combat elements. Additionally, they provided the means to help care for the sick, malnourished, and maltreated civilians at refugee camps; helped repatriate refugees and Kuwaitis; served as brokers for host nation support on contracting needed resources

for the growing refugee and prisoner of war populations; surveyed facilities for use by American forces; and in some cases persuaded Iraqi soldiers to surrender.

Unlike the situation in Urgent Fury and Just Cause, following the liberation of Kuwait, the legitimate Kuwaiti government and its people were ready and able to restore their infrastructure and economy. Therefore, the civil affairs mission was not the envisioned reconstruction of a country's infrastructure by a military government in an occupied territory, but one of assisting the Kuwaiti government by providing advice on contracting matters with outside firms to reconstruct their country. Then the focus shifted from long-term reconstruction to short term recovery.⁴⁸ This assistance by civil affairs units became particularly important because during the initial meetings between Kuwaiti officials, the American command, and members of the United States State Department, it became clear that some had little knowledge of the civil affair unit capabilities and how they could be utilized.⁴⁹ This would also be true during the subsequent peacekeeping operation of Provide Comfort.

On April 5, 1991, with the announcement by President Bush that the United States would provide humanitarian relief to the estimated 450-700,000 Kurdish refugees then in the process of fleeing from Northern Iraq into the mountains of Southern Turkey, Operation Provide Comfort began. The mission was expanded on April 16, 1991, to include the establishment of temporary shelters for Kurdish displaced persons in northern Iraq.

Operation Provide Comfort had three sets of objectives which coincided with the transition from crisis to stability. Two immediate American objectives of Provide Comfort emerged during the stability phase: First was survival - stopping the dying and suffering and stabilizing the Kurdish population. Second was protection of the Kurdish population by providing shelter and physical security. The mid-term objectives were resettlement of the refugees by constructing temporary resettlement facilities, establishing way stations, resettling displaced civilians to towns or villages and resettlement facilities, and finally providing continuous security. Another important mid-term objective was to transfer humanitarian operations to international relief organizations or private volunteer organizations. Finally the long term objective was to withdraw American forces from the area.⁵⁰

But from the time of the President's directive until guidance from the United States State Department some seventeen days later, the American Army commander was legally and morally responsible for care of the Kurdish refugees. The commander utilized soldiers and special operations forces to achieve the humanitarian and stabilizing mission. Because of excessive delays in moving civil affair units from Saudi Arabia to Southern Turkey and Northern Iraq, in the initial stability phase the commander did not have any civil affairs units and assets until some nineteen days later.⁵¹ Additionally, American and international civilian agencies were not prepared to undertake

the detailed planning required to assume responsibilities for civil affairs or large scale humanitarian reliefs which exceeded their abilities.⁵² The commander interfaced with hundreds of volunteers from over 47 different civilian humanitarian relief organizations.⁵³

Under Operation Provide Comfort, the United States provided humanitarian aid to some 500,000 refugees, displaced persons, and others. It delivered significant logistical support of food, water, shelter, and other items. After two months, over 2,700 short tons of bulk food, 4.8 million Meals Ready to Eat, 675,000 liters of water, 195,000 blankets, 7,000 tents, and 10,000 field jackets had been distributed. In addition, Army aviation significantly contributed to the operation by providing aerial resupply of critically needed items to remote areas that could not be reached expeditiously by land vehicle.⁵⁴

Civil Affairs

"The sooner I can get rid of these questions that are outside the military in scope, the happier I will be! Sometimes I think I live ten years each week, of which at least nine are absorbed in political and economic matters...and what a lot of headaches I found. Water supply damage. No

power. No food. No fuel, and corpses all over town to bury."

General Dwight Eisenhower
in Crusade in Europe

Future commanders may wonder whether they need to be overly concerned with stability and constabulary duties. After all they plan to have civil affairs assets for the military operation, and the civil affairs experts will offer steady guidance during the post conflict phases. Even so, commanders must be knowledgeable on their post-conflict responsibilities. They must be aware that those responsibilities will most likely be performed by combat personnel who are not trained in civil-military matters during the stability and nation-building phases.

Lessons learned from these contingency operations - - Power Pack, Urgent Fury, Just Cause - Promote Liberty, and Desert Storm - Provide Comfort - - confirm that low-intensity conflicts are very different in scope, in political - military considerations, and in the extent of nation assistance required. They will mostly likely take place in a developing country. Additionally, the histories of the operations disclose that today there are structural, legal, and practical problems which may prevent reserve civil affairs units from being available to the commander. Thus combat soldiers will have to take care of these civil-military functions.

Historically, civil affairs units originated in the American Army during World War II to meet the need for military

specialists to administer areas liberated from German and Japanese occupation and to govern areas then occupied by victorious United States forces.⁵⁵ During that war, civil affairs forces were deployed to reconstruct governmental infrastructure and care for large numbers of dislocated civilians.⁵⁶ They had little advanced training and took little organic equipment and supplies with them; they had to improvise with what they could find on the scene. The priority demands of combat forces in World War II dictated that civil affairs personnel rely on indigenous supplies for their needs. Such bootstrap civil affairs operations will likely be the case in any future war.⁵⁷

From World War II to the present, civil affairs units were structured and had as their doctrine the conventional support for civil-military operations for an European conventional war. Additionally, the bulk of civil affairs assets were placed in the reserves. The structuring of civil affairs assets in the reserves presents a legal obstacle to any peacetime low-intensity operation that depends upon reserve support to accomplish the civil affairs mission. Reserve units cannot become operational without first being mobilized. The stability needs of the four discussed low intensity conflicts indicates that mobilization of reserve civil affairs assets was needed for extended duty. Even though the National Command Authorities have the authority for such call-up, they have exhibited great reluctance to do so. In short, mobilization is not likely during peacetime in support of

relatively small-scale low-intensity operations. While generally not a problem for civil affairs wartime missions, the requirement for mobilization all but eliminates a civil affairs capability in peacetime low-intensity conflict. In fact 97 percent of civil affairs personnel and 36 of the 37 Army civil affairs units are in the reserve component.⁵⁵

The 36 reserve civil affairs units are primarily composed of senior grade officers. Even the companies are top heavy. And the three general officer commands have a preponderance of field grade officers. The primary reason for this staffing is to facilitate coordination with senior foreign military, diplomatic, and host country personnel in the fulfillment of their civil affairs mission. Most civil affairs units are organized into teams which train for a specific country or region. Civil affairs units, unlike other reserve units, do not deploy for training as a unit. They often schedule fragmented annual training to accommodate their need for in-country training.⁵⁶

For duty other than training, civil affairs reservists must volunteer either for special projects with active component units or for extended active duty. Especially in domestic disasters, the real value of civil affairs would be to provide essential emergency services until local governments are able to resume their activities.⁶⁰

This volunteer approach to activating reserve civil affairs personnel has another drawback. They deploy individually and without a headquarters element, thus they "elude" established

command and control. Also, a majority of the citizen-soldiers that volunteered during Urgent Fury and Just Cause - Promote Liberty required extensive preparation for overseas movement that could not be accomplished by their parent unit. They had to receive this preparation from the United States Army Special Operations Command at Fort Bragg.⁶¹ In contrast with Operations Urgent Fury and Just Cause - Promote Liberty, during Operations Desert Storm and Provide Comfort reserve civil affairs support was not provided through the use of volunteers. Reserve civil affairs units for Desert Storm were mobilized and deployed for the most part following Capstone alignment. For Provide Comfort, civil affairs resources were received from the United States and reserve units were redeployed from Saudi Arabia.⁶²

Another structural and doctrinal problem is that most civil affairs units are configured for conventional support, such as civil military operations in a conventional European war.⁶³ There is an internal debate within the civil affairs community and active duty special operations forces about whether the primary mission of civil affairs is to provide general support for conventional conflicts, as most believe, or rather to change focus and support low-intensity conflicts and contingency operations. This issue is thus a subject of larger strategic controversy: conventional versus low-intensity conflict operations, a peacetime versus a wartime chain of command, and active versus reserve component chain of command. Unfortunately, civil affair concerns do not receive as much priority⁶⁴ as they

should and are often viewed as expendable during cost savings periods and declining defense budgets.⁶⁵ This may create an anomaly: the utility of civil affairs assets will increase due to the nature of future American conflicts, at the very time that their budget is diminished due to their traditional low priority in the Army budget.⁶⁶

Another problematic area is the attempt to apply wartime doctrine to peacetime contingency operations. During military operations the care and control of civilians is a command responsibility. Within the Department of Defense, Army civil affairs personnel are responsible for civil-military operations and assisting the commander to meet all legal obligations and moral responsibilities to the civilian population.⁶⁷ This was clearly seen during Desert Storm and greatly assisted in the success of the military operation.

Civil affairs units plan and implement twenty functional specialties,⁶⁸ one of which is caring for civilians dislocated by war. While the doctrine refers to a wartime capability, it is equally applicable to low-intensity conflicts or to contingency operations, such as disaster relief within the United States. In spite of this doctrine, currently no civil affairs capability is prepared to assist dislocated civilians in an emergency. Further because assistance for dislocated civilians has been viewed as a wartime civil affairs mission, there has been no effort to develop an emergency capability for peacetime military operations. The obligation to care for dislocated civilians in

wartime arises only after American forces assume control of contested territory. This allows ample time after mobilization for civil affairs reserve forces to prepare for the mission as experienced during Desert Storm.

In addition to caring for dislocated civilians outside the combat zone, civil affairs must also be able to minimize civilian interference with military operations inside the combat zone." The emphasis of this wartime civil affairs mission, known as command support, is to prevent civilians from becoming obstacles to combat operations rather than to gain civilian support for political objectives. In combat, effective population and resources control can spell the difference between victory and defeat. Large groups of civilians at the wrong place can be war stoppers.

The contrasting emphasis of civil affairs wartime and peacetime operations reflects the contrasting role of civilians in each environment. In wartime, military objectives predominate, and civilians are more liabilities than assets to combat operations. The opposite is true in low-intensity conflicts, where mobilizing public support is essential to mission success. While the civil affairs wartime mission for dislocated civilians does not have the priority of its comparable role in a low-intensity conflict mission, it nevertheless deserves a higher priority for readiness than it currently enjoys. The development of a civil affairs capability to provide peacetime disaster relief would contribute to civil affairs

readiness for its wartime mission.

Observations and Conclusions

As the United States enters a multipolar world in the Post Cold War Era, it is likely that the importance of post-conflict termination will increase relative to other elements of power. Certainly in situations of violent peace and low-intensity conflicts, this will be the case. The experiences of Power Pact, Urgent Fury, Just Cause and Promote Liberty, and Desert Storm and Provide Comfort illustrate that while the combat or crisis stage may last from hours to months, the stability and nation-building phases often will last from months to years. Commanders and planners in the operational art must plan for and address the many and varied civil military issues that arise during combat and then during post-conflict stages.

Transitioning from combat to peace-keeper, the commander becomes a constable in civil-military operations. Some will view post-conflict planning as no big concern. They believe that civil affairs assets or guidance from the National Command Authorities or other sources will be forthcoming. However, the history of our four low-intensity conflict operations in this study reveals that Army commanders will be required to address civil military issues using combat personnel for a brief period following cessation of combat. This was also true during Desert Storm and Provide Comfort when civil affairs units were

mobilized. As a result, commanders cannot count on having civil affairs assets due to current force structural, legal, and budgetary realities.

Civil affairs assets are the tools with which commanders meet their legal responsibilities during combat and peacetime contingency operations. However, for this tool to be available and effective in the future, commanders at the operational level must be knowledgeable about the wartime and peace-time requirements, must plan the transition between these periods, and must train in peace-time to handle substantive issues unique to the stability phase. Army doctrine should fully accommodate post-conflict stability responsibilities and prioritize stability missions and assets into contingency plans. The active duty force structure should incorporate more civil affairs units and generate soldiers with a secondary military occupational specialty in civil affairs. This review of four low intensity conflicts provides guidance for these recommendations.

Three general scenarios emerge from the four low-intensity conflicts discussed. First, when there is full or partial mobilization of the reserves, there may be sufficient civil affairs assets available to the commander when American forces assist a friendly government in meeting responsibilities for public health, security, and other immediate needs provided that the country has a viable government and sufficient resources (as in Kuwait). Once the military phase of operation is achieved, commanders are able to turn over the stability and nation-

building roles to the country team. Or as happened during the Dominican Republic operation, because of the extent of damage to the infrastructure and limited civil affairs assets, combat soldiers must be used during the stability and restoration mission. Second, and probably the more common scenario for future low intensity conflicts, when occupying a country where there is no full or partial mobilization, as occurred during Just Cause, the American forces' role will be prolonged. Finally, when United States forces are providing humanitarian aid within a de facto neutral zone (as in northern Iraq through Provide Comfort), the Department of Defense must work through the Department of State to transfer responsibility for humanitarian relief to appropriate international agencies. (Even though reserve civil affairs units mobilized during Desert Storm were ordered to Provide Comfort, their arrival was delayed by approximately nineteen days. The task force commander during the interim used American combat forces for the initial stability phase.) Prolonged use of United States forces in civil functions after Power Pack, Urgent Fury, Just Cause, and Provide Comfort, however, conflicts with the National Command Authorities' desire for rapid withdrawal of forces. Further it causes Department of Defense to absorb unbudgeted expenses not directly related to warfighting.

In all four low intensity conflicts, the combat or crisis phase lasted from days to months, while the stability and nation-building phases extended from months to years. Civil affairs

assets may or may not be available. Even if they are, the commander will still be required to supplement their effort. Additionally, while the United States Department of State has the principle responsibility for the development and orchestration of nation assistance efforts, the commander will shoulder the responsibility during the stabilization phase, while the appropriate authorities determine and organize the transition to a legitimate government or international organization.

Therefore, it is imperative that the responsible ground commander develop a methodology to address the care, feeding, sheltering, healing, and protection of the various populations. The commander must initiate these activities at the first available opportunity. These stability and peace-keeping efforts must be streamlined to quickly and orderly accomplish the transfer to the appropriate governmental or international agency in order to reduce the occupation time of the military force.

The commander is responsible for restoring order and providing humanitarian assistance. To assist the commander, I suggest the following methodology:

First: Determine the size of the belligerent and civilian populations in order to marshal sufficient resources for caring, feeding, sheltering, transporting, and healing these populations.

Second: Separate out the combatants from the non-combatants. Then within each category break out sub-groups according to status: prisoners of war, criminals, refugees,

asylum seekers, those seeking safe passage, and dislocated civilians. Encourage non-threatening civilians to voluntarily return to their homes. Assist them in doing so. Additionally, determine whether there are any responsible skilled labor or others who can assist in rebuilding the infrastructure.

Third: Emergency humanitarian programs must be immediately implemented to provide food and water (acquisition, rationing, distribution), medical care and medicine, sanitation, transportation, and shelter (tents, fixed structures, or the building materials to construct the them; heating and electricity if appropriate). Be mindful of dietary and clothing requirements and customs.

Fourth: Establish plans for law and order in the area of operation. Locate and disarm all hostile military and police officials. Establish curfews and ordinances (for example to control travel, gatherings, fire arms, alcohol, and narcotics), if appropriate. Conduct joint patrols with local police members who are accepted by legitimate local authority. Additionally, execute plans to remove (arrest only if they have committed crimes against lawful authority) undesirables from area in order for legitimate authority to govern. Prevent looting of commercial enterprises, banking establishments, and governmental structures.

Fifth: Establish guidance and policies for processing requests for political asylum, temporary refuge, and safe passage.

Sixth: Develop a logistical system to continue to acquire

and transport food, fuel, medical supplies, and shelter items. Provide refrigeration for food and medical supplies.

Seventh: Develop a health program to prevent communicable disease while people are living in temporary shelters, and facilitate rehabilitation of the pre-existing health care system so that it can assume the responsibility.

Eighth: Assist in the emergency repair of critical services. Assist in the repair or replacement of water systems, sanitation (garbage and sewage disposal systems), electrical and communication (telephone, television, radio, etc.), transportation (road, rail, ports and air).

Ninth: Develop an extensive information system to communicate various information programs concerning policies and governing rules and regulations to local population in English and the local language.

Tenth: Develop a transition plan to hand off the humanitarian care responsibilities to governmental or international agencies. The transition should be staged and placed under one point of contact to provide orderly assumption of responsibilities. Know the players: their purposes and authority, capabilities, and relationships to other countries.

APPENDIX A

Joint Publication 3-57, Doctrine for Joint Civil Affairs and Army Field Manual 47-10, Civil Affairs Operations⁷⁰ discuss the 20 common nation building functions and tasks associated with civil affairs operations. Rather than duplicate the guidance found in these sources, this appendix applies that guidance to make it applicable to the stability phase of low intensity conflicts and contingency operations.

Issues common to the four low intensity conflicts are discussed in this appendix. Practical examples of documents appropriate for use during the stability phase of low-intensity conflicts and contingency operations are presented in Appendix B. The issues and documents chosen occurred during the stability phases of the discussed four low-intensity conflicts reviewed in this study.

Issues

I. Restoration of Order.

- A. Existing Law.
- B. Treatment of Inhabitants.
- C. Protection of Cultural Property.
- D. Enactment of Rules.
- E. Martial Law.
- F. Rules of Engagement.

II. Civil Administration Issues.

- A. Claims.

1. Appointment of Foreign Claims Commissions.
2. Damage Surveys and Claims Investigations
3. Claims to Nationals of a Combatant.

B. Irregular Procurement.

1. Requisition of Privately Owned Vehicles.
2. Occupation of Civilian Buildings.

C. Funding.

D. Contracts.

III. Miscellaneous Issues.

- A. Status of Persons.
- B. Souvenirs and War Trophies.
- C. Adoptions.
- D. Commercial Sponsorship.

Discussion

I. Restoration of Order.

The first order of business is to establish who is in charge and what rules will prevail during the stability phase.

Commanders must consider:

A. Existing Law. The commander must respect the domestic law unless absolutely prevented from doing so. Penal laws may be repealed or suspended in occupied territory by commanders provided that the National Command Authorities or Congress agree. Repeal or suspension is appropriate only in cases where local laws constitute a threat to the occupant's security or are an obstacle to the application of the Geneva Convention. That is, those penal laws that are in conflict with the humanitarian

principles of the Convention may be suspended by the National Command Authority or Congress.⁷¹

B. Treatment of Inhabitants. Under international law, commanders must afford fair, just, and reasonable treatment of inhabitants of occupied areas. This policy does not prohibit necessary punitive and disciplinary measures essential to maintain order, but it does forbid using inconsistent or unnecessarily harsh treatment.⁷²

C. Protection of Cultural Property. Cultural property is defined as any property of great importance to the cultural heritage of a people, such as monuments of architecture, art, or history; archaeological sites; buildings that are of historical or artistic interest; works of art, manuscripts, books, and other objects of artistic, historical, or archaeological interest; scientific collections and important collections of books or archives, or reproductions of the property defined above. Buildings used for cultural or religious purposes are included in the definition of cultural property.⁷³

D. Enactment of Rules. Penal provisions enacted by the commander must comply with the Geneva Convention. Penal provisions shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The provisions cannot be retroactive. Proclamations, ordinances, orders, curfews, and instructions intended to be binding upon the inhabitants will be published in writing - both in English and in the languages of the inhabitants

- and dated. Publications must receive the widest publicity possible.⁷⁴

E. Martial Law. Martial Law has been widely misunderstood. Martial Law is not Military Law, nor is it the same as Military Government. Military Law is the law governing the American armed forces as set out in the Uniform Code of Military Justice, while Military Government is the government by military forces of a territory occupied by a belligerent. Martial Law prevails when military agencies carryout governmental functions in domestic territory, in whole or in part, with the consequent suppression of some or all civil agencies. Martial Law can be qualified; that is, some civil instrumentalities may still function. Or it may be absolute, wherein every civil entity is carried on by the military.⁷⁵

Martial Law is the public law of necessity. Necessity calls for it, necessity justifies its exercise, and necessity directs the degree that it will be employed. Martial Law can be federal as when the President, under the Constitution, declares Martial Law. Martial Law can also be called by a governor or state legislature in accordance with that state's constitution.

Under federal Martial Law, the President has the authority under Article I, Section 8 of the United States Constitution "to execute the Laws of the Union, suppress Insurrections and repel Invasions." The President is also empowered to use military forces (active or federalized National Guard) to suppress insurrection within a state or territory. Procedurally,

establishment of Martial Law first requires an application by a state legislature, or the chief executive, when the state legislature cannot be convened. Second, it requires a personal decision by the President (this cannot be delegated). Third, if the President decides to use military forces, the President issues a proclamation. Finally, the President issues the orders and instructions through the appropriate chain of command to quell the disorder.⁷⁶

On 32 occasions, Martial Law has been proclaimed in the United States. Twenty-two occurred before World War II and ten after. Five involved federal support, four state support, and one incident established federal support in the District of Columbia in 1968. Overall, the exercise of Martial Law in the United States has been controversial and occasioned much litigation.⁷⁷

F. Rules of Engagement. Rules of Engagement reflect the requirements of the Law of War, operational concerns, and political considerations when military force shifts from peace to war or crisis and back to the peace phase of an operation. They are the primary means the commander conveys legal, political, diplomatic, and military guidance to the military force in peacetime for handling the crisis. Generally in wartime, the commander through Rules of Engagement will permit a wider use of military force. However Rules of Engagement will restrict the use of military force to the achievement of the political objectives.

In all operations, the commander is legally responsible for the care and treatment of civilians and property within the area of operations until transfer to a proper government. Rules of Engagement assist the commander in fulfilling these responsibilities.⁷⁴ (See Appendix B for two sample Rules of Engagement for contingency operations.)

During the four discussed low intensity conflicts, the Rules of Engagement varied and often changed during the respective phases from combat or crisis through stability to nation-building phases. Even during a single phase and operation, the Rules were amended at the different levels of command, which may have resulted in confusion. Also, Rules appropriate for a particular operation may not be appropriate for another.

While the Rules must be tailored to the occasion, they should observe certain basic principles. They must explain that, at all times, use of only the minimum force required to accomplish the mission is appropriate. This paramount principle should control both the selection of appropriate operational techniques and tactics, and the choice of options. Under this principle, the use of deadly force is authorized only under extreme circumstances where certain criteria are met. Accordingly, deadly force is not authorized for the purpose of preventing activities which do not pose a significant risk of death or serious bodily harm. The use of deadly force is authorized when the following conditions are present:

First, lesser means have been exhausted or are unavailable;

Second, the risk of death or serious bodily harm to innocent persons is not significantly increased by its use; and

Third, the purpose of its use is one or more of the following: First, self defense to avoid death or serious bodily harm; second, prevention of a crime which involves a substantial risk of death or serious bodily harm, including the defense of others; or third, the prevention of the destruction of public utilities or similar property vital to public health or safety, or detention or prevention of the escape of persons who have committed or attempted to commit one of the serious offenses referred to above in 1, 2 or 3 immediately above.

Non-deadly force is appropriate to control disturbance, to prevent crime, and to apprehend or detain persons who have committed crimes. The degree of force used must be no greater than that reasonably necessary under the circumstances.⁷⁹

Once these rules have been tailored to a given situation, they should be printed on cards and distributed to soldiers with instructions to carry them at all times and to observe them on all occasions. But insure that there is only one set of Rules. Avoid as much as possible implementing Rules at the different echelons of authority. The Rules of Engagement should also clearly spell out proper conduct for weapons control. Commanders must clearly set limitations on the use of firepower, especially automatic fire, and restrict the type of weapon and ammunition.

Additionally the Rules should concisely establish guidance for the search and seizure of inhabitants, the authority of local

security patrols, the control of blackmarket operations, and surrender of hostile personnel.

II. Civil Administration Issues.

A. Claims. Whether arising during a low-intensity conflict or a peacekeeping contingency operation, claims against the United States will arise from inhabitants of the occupied territory and members of the United States force. They may be based on assertions of looting, requisitioned private property, occupation of private structures, damage to private property, or loss of American soldiers' personal property. The commander should consider:

1. Appointment of Foreign Claims Commissions. Foreign Claims Commissions should be appointed prior to deployment (see 10 U.S.C. Sec. 2734, DoD Dir. 5515.3, and CH 10, AR 27-10). The number of commissions will be dependent on the extent of the operation.⁸⁰

2. Damage Surveys and Claims Investigations. It is imperative that once notice is received of damage to private property, injury to local inhabitants, or requisitions of private property that adequate documentation is developed to identify who, what, how, and when. (See Appendix B for a suggested form.) Detailed documentation is needed to protect United States interests concerning potential claims. Use photographs to document claims, and provide a record of a complete investigation of many claims. Some common problems are: difference in languages, unauthorized

promises of compensation to the injured party (only Foreign Claims Commissioner should commit payment), failure to establish a central claims office and broadcast its location in the inhabitants' language, and failure to determine whether compensation should be in local or United States currency (recommend coordination with higher headquarters because of political considerations).

3. Claims to Nationals of a Combatant. During the peace keeping operation Provide Comfort, there were numerous claims against the United States by nationals (Kurds) of Iraq for property use and damage. Because of the recent conflict of Desert Storm and the traditional policy against paying war damage claims, these claims were initially denied. The policy was then reconsidered and claims were paid under the provisions of the Foreign Claims Act. Under provisions of the Act, claims may be paid to nationals of a country at war with the United States if they are determined to be friendly to the U.S. In this case, the Kurds satisfied this requirement. Thus commanders should make every effort to see that the applicable rules determine the final status of a claim.

B. Irregular Procurement.

1. Requisition of Privately Owned Vehicles. In Operations Urgent Fury and Just Cause, private and commercial properties, particularly vehicles, were requisitioned for operational use. Such taking of property is legitimate under the law of war. Nevertheless, a property owner must be compensated as soon as

possible for the use of the property. In most cases, the taking cannot be ratified as an irregular procurement, since there was no agreement between the property owner and the person taking the property. Neither the contracting process nor the claims process authorizes payment. (The claims process can, however, be used if the property was destroyed or damaged through non-combat activities.)

To encourage substantiation and help expedite the claims process, recommend commanders institute a receipt and accountability system when requisitioning private property. At Appendix B are suggested private property receipts for this use. One copy of the receipt should be given to the owner of the property or left with a responsible person, while the original receipt should be sent forward to a central point of contact at either battalion, brigade, or task force level.

2. Occupation of Civilian Buildings. Occupation of civilian building, including homes, presents a legal and financial problem. Civilian buildings should be occupied only under either the provisions of a lease or because of military necessity."

C. Funding. Funding for contingency operations, humanitarian and civic assistance missions outside the United States does not fall neatly under any one set of rules. Rather it depends on the uniqueness of the mission. Each case is different. Legislation for streamlined funding, while proposed, is lacking. Today, the component commander is without relief and

must fulfill the mission generally with existing service funds with minimum chances of financial relief.

Generally, when a Commander-In-Chief gives a mission order to a service component, the military department is told to capture the costs of the operation and forward those amounts to the Comptroller, Office of the Secretary of Defense. The Commander-In-Chief has limited funding authority¹² and passes that responsibility to the service component tasked with the mission.¹³ Generally, guidance as to what funds are to be used is not provided in the tasking. The Comptroller may be able to use the United Nations Participation Act¹⁴ to receive reimbursement, but generally it is waived. The Department of Defense will, however, seek reimbursement from Congress or the Department of State. While the Department of Defense will generally be reimbursed, the service component who received the tasking will not. The commander's only recourse is to request additional funding through the Service's chain of command.

Occasionally, there may be stock items excess to the Department of Defense available for relief operations¹⁵, but transportation of the items is the responsibility of the requestor.¹⁶

Generally, for humanitarian and contingency operations, the Army pays to move soldiers to the theater and, for Department of Defense stocks and items from private sources, the Air Force pays airlift from the Airlift Mission Account and the Navy pays sealift from the Sealift Mission Account. If the stock items are

from other governmental agencies, the services may receive reimbursement for transportation under the Economy Act.¹⁷

The issues for a commander will be more basic. The commander will be confronted with issues concerning resources and uses of funds. Local contracting and purchasing operations (for example, food, petroleum, oil, and lubricants) will occur throughout the operation. Additionally, difficult issues will arise on the spectrum of coordinating a contract with the Post Exchange Clothing Sales Store or compensation by means of economic assistance through sale, grant, lease or loan to a friendly foreign government.

The following funding was suggested during Operation Provide Comfort¹⁸ and may serve as a model in future contingency operations:

1. Use funds normally available to commander for execution of missions to support United States forces.¹⁹ I recommend that responsibility for funding or the nature of funding be identified in the contingency plans. Also consider the Food and Forage Act and any Continuing Resolution Authority.

2. If normal funds cannot be used and the requirement can be satisfied from issuance of Department of Defense stock, then use the authority under two drawdown authorities (22 U.S.C. 2318 (A)(2) - \$75 million, and 22 U.S.C. 2348 A (c)(2) - \$25 million).

3. If the above funding sources are not available, use the Commander-In-Chief Initiative Funds. Generally, these funds were used for humanitarian relief assistance, for offshore

procurement, and for procurement in excess of \$15,000 per item.

4. When none of the above funds are authorized or available, then use the money from the United Nations Participation Act.

Other possible funding sources are the provisions of the Foreign Assistance Act of 1961.⁹⁰ The Act empowers the President to furnish aid to both friendly nations and to international organizations for peacekeeping operations. The Act also authorizes the President to furnish aid to foreign countries from annual appropriations from the Economic Support Fund when the President determines this aid would "promote economic or political stability." These funds cannot be used to support the foreign military or for paramilitary purposes. The Economic Support Fund is not managed by the Department of Defense, but by the Agency for International Development.⁹¹ However, the commander can request support through the chain of command, as occurred during Desert Storm and Provide Comfort.

The commander must determine whether United States or local currency will be used to pay claims, contracts, or in cashing personal checks for American personnel. First, he should determine whether United States currency is authorized in the area of operation. Payments made to American personnel are usually made in dollars or dollar instruments. If United States dollars are not used in the local economy, then an exchange facility must approve the source of foreign currency exchange. If United States currency is not used to pay American military

personnel, all United States currency should be converted within 48 hours after arrival to avoid currency problems.⁹²

Thus the commander should consider whether using United States currency would adversely effect the operational area by inflating the local economy and creating a "black market"⁹³, or whether it would be politically unwise.⁹⁴

D. Contracts. A unit deploying on a low intensity conflict or contingency operation has numerous requirements that must be satisfied from the local economy, regardless of the particular mission. Some are routine purchases, but others are unique.

Statement of Work. During the peacekeeping contingency operation of Provide Comfort, the issue arose as to the proper vehicle to compensate Iraqi farmers for use of their land for the Kurdish transient camps by the United Nations High Commissioner for Refugees. After reviewing the merits of payment by means of the claims procedure vis-a-vis contracting, the contract approach was determined the better. The traditional claims avenue was not the answer for obtaining future use of the land. However, the primary problem with the contract approach was that the land was already being used by the allies for the Kurdish refugees. Accordingly, ratification of unauthorized commitments would normally be required. Nonetheless, it was further determined that ratification was not required since these contracts, and the funds used for these contracts, were specifically for relief of the Kurds, under the authority of 22 U.S.C. Sec. 287(d)(1), Noncombatant Assistance to the United Nations. This statutory

authority applies for operations directed by the President in support of activities specifically directed by the United Nations, notwithstanding any other provision of law. Contracts were written for the contractor to provide a service, that is, the right to enter the land to conduct humanitarian relief operations. The contracts also provided for non-exclusive use of the land. The owner/contractor retained control over and retained the right to use the property. The landowner's use, however, was limited since it required prior notification and consent by the United States. The contracts also prohibited landowner use that adversely affected use by the United States. See Appendix B for a sample Statement of Work Contract.

III. Miscellaneous Issues.

A. Status of Persons. Questions regarding the legal status of persons will arise during low intensity conflicts and peace keeping contingency operations. For example, during the humanitarian operation of Provide Comfort following Desert Storm, many Iraqi soldiers and others sought United States protection as prisoners of war. Although a multinational force occupied northern Iraq, the operation was not an occupation; therefore, those seeking refuge were not accorded the status of prisoners of war. Iraqi soldiers encountered in the exclusion zone were disarmed and briefly detained for turn-over to the Iraqi representative through the Military Coordination Center.. Questions concerning asylum were handled by the United States in

accordance with federal statutes and military regulations. Although we may grant temporary refuge to those fleeing danger, American forces cannot grant asylum, a function of immigration authorities or the Attorney General in the United States or at the United States border. (A refugee is anyone fleeing persecution in his own country for political or religious reasons.) Similarly, the United States cannot grant refugee status in another sovereign's territory, nor do citizens qualify as refugees within their own borders. On the other hand, temporary protection can be given to anyone seeking food and protection.

B. Souvenirs and War Trophies. Commanders must make prompt dissemination of an unequivocal command policy on souvenirs and war trophies. The two terms are not synonymous: Souvenirs are artifacts acquired legally from peaceful sources, whereas war trophies refer to items of military equipment or weaponry confiscated from a combatant. While United States policy will control acquisition and possession of such items, compliance with host country customs and laws is also a must. Generally, if we are not engaged in hostilities with another party, as during a peace keeping contingency operation, there is no legal authority to confiscate military or other property of the host government as spoils of war. As to war trophies acquired during low intensity conflicts, the national command authority will issue clear guidance. Normally, items of military clothing and insignia; individual military equipment such as helmets, load

bearing equipment, protective masks, mess kits, canteens, ammo pouches; and, on occasion, bayonets and knives may be kept by individual military members of the United States. However, firearms, ammunition, expended ammunition cartridges, explosives of any kind, and pyrotechnics usually may not be allowed kept. As a general rule, all property (to include property abandoned by the combatant as well as property left behind or cast aside by civilians in flight from the conflict) located in the combatant's territory, regardless of its ownership, is regarded as enemy property subject to the laws of war; it then becomes the property of the United States.⁹⁵

C. Adoptions. Very often such operations as Power Pack and Provide Comfort, American soldiers seeing homeless or starving children initiate inquiries regarding adoption. While legally it may be possible to adopt a foreign national, the practical considerations make such efforts nearly impossible. Often the commander is required to address this issue and establish a policy. In order to adopt, a person must comply with the laws of the country in which the child resides. Ascertaining that law, possibly hiring a local attorney if necessary, and working through locally approved adoption agencies is often required. A home study is often necessary as well. Even after complying with local host country laws, obtaining the required visa to take the child back to the United States is problematic. United States laws require that a child's natural parents relinquish all custody rights. This must be proven to the satisfaction of the

United States Immigration and Naturalization Service. Adopting a child in a foreign country also requires that the prospective parents work through the American embassy located in the country of origin.

D. Commercial Sponsorship. Often during low-intensity conflict operations, commanders, because of shortage of funds, question whether commercial sponsorship can be solicited to offset shortfalls of funding for morale, welfare, and recreational activities. Generally, commercial sponsorship may be solicited for morale, welfare, and recreational events, but it should not be used to obtain support for an entire program, such as the overall contingency operation. Sponsors should be solicited competitively. Defense contractors should not be targeted. Nor should the commander directly attempt to select a class of individuals or corporations for such sponsorship.

APPENDIX B

This appendix provide sample documents which address issues raised in Appendix A. These documents may be adaptable for use by commanders during the stability phase of low intensity conflicts and contingency operations. These samples must be tailored to the operational and political considerations of the operation.

Index of Forms

- A. Rules of Engagement.
- B. Statement of Work Contract.
- C. Sample Receipt of Seized Property.
- D. Other.
 - 1. Curfews.
 - 2. Ordinances.

A. Rules of Engagement.

The following are two sample Rules of Engagement: The first was used in the initial stabilization phase of Operation Provide Comfort, while the second was used in Promote Liberty.

The Rules of Engagement for Operation Provide Comfort were prepared by United States European Command. They are provided to illustrate the complex nature of a peace-keeping and humanitarian operation in a theater of war. The Rules were later amended twice. Likewise, allies participating in Provide Comfort issued

similar compatible Rules.

Rules of Engagement for
Operation Provide Comfort

1. All military operations will be conducted in accordance with the Law of War.

2. The use of armed force will be utilized as a measure of last resort only.

3. Nothing in these rules negates or otherwise overrides a commander's obligation to take all necessary and appropriate actions for his unit's self-defense.

4. U.S. forces will not fire unless fired upon, unless there is clear evidence of hostile intent.

HOSTILE INTENT - The threat of imminent use of force by an Iraqi force, or other foreign force, terrorist group, or individuals against the U.S., U.S. forces, U.S. citizens, or Kurdish or other refugees located above the 36th parallel or otherwise located within a U.S. or allied safe haven refugee area. When the on-scene commander determines, based on convincing evidence, that HOSTILE INTENT is present, the right exists to use proportional force to deter or to neutralize the threat.

HOSTILE ACT - Includes armed force used directly to preclude or impede the mission and/or duties of U.S. or allied forces.

5. Response to hostile fire directly threatening U.S. or allied care shall be rapid and directed at the source of hostile fire, using only that force necessary and proportional to

eliminate the threat. Other foreign forces (such as reconnaissance aircraft) that have shown an action with the attacking force may be engaged. Use amount of force necessary to control the situation.

6. You may fire into Iraqi territory in response to hostile fire.

7. You may fire into another nation's territory in response to hostile fire only if the cognizant government is unable or unwilling to stop that force's hostile acts effectively and promptly.

8. Surface to air missiles will engage hostile aircraft flying north of the 36th parallel.

9. Surface to air missiles will engage hostile aircraft south of the 36th parallel only when they demonstrate hostile intent or commit a hostile act. Except in cases of self-defense, authority for such engagement rests with the designated air defense commander. Warning bursts may be fired ahead of foreign aircraft to deter hostile acts.

10. In the event United States forces are attacked or threatened by UNARMED hostile element, mobs, or rioters, the responsibility for the protection of United States forces rests with the United States commanding officer. On scene commanders will employ the following to overcome the threat.

- a. Warning to demonstrators.
- b. Show of force, including use of riot control formation.
- c. Warning shots fired over the heads of hostile elements.

d. Other reasonable uses of force necessary under circumstances and proportional to the threat.

11. Use the following guidelines when applying these rules:

a. Use force only to protect lives.

b. Use minimum force necessary.

c. Pursuit will not be taken for retaliatory actions.

However, immediate pursuit may begin and continue for as long as there is an imminent threat to United States forces. In the absence of Joint Chiefs of Staff approval, United States forces should not pursue any hostile force into another nation's territory.

d. If necessary and proportional, use all available weapons to deter, neutralize, or destroy the threat as required.

Rules of Engagement for Promote Liberty*

Interrelated legal principles which apply to all operations:

A. Necessity: Measures, not prohibited by international law or the Law of War, required to respond to a hostile act or the demonstration of hostile intent.

B. Proportionality: Responding with force limited in intensity, duration, and magnitude to that reasonably required to successfully counter a hostile act or hostile intent.

C. Avoidance of unnecessary suffering: Destruction or injury to persons or property is prohibited unless necessary to

gain valid military advantage. Weapons should be deployed in such a manner as to minimize collateral damage, without risking United States lives or interests.

Rule for Leaders

1. A commander will take all steps necessary and appropriate for his unit's self defense.
2. Use only minimum force necessary to control the situation.
3. Use deadly force only as a last resort.
4. If possible when returning fire, use selected marksmen.
5. Without endangering your unit or risking the success of the mission, take measures to minimize risk to civilians.
6. Riot control agents may only be used when authorized by Commander, Joint Task Force - Panama.
7. Upon cease fire, take necessary measures to maintain control and to assist any injured.

Rules for Individuals

1. Apply common sense to assess the situation.
2. If fired upon, fire back if necessary in self defense.
3. If it reasonably appears that you are about to be fired upon, fire if necessary in self defense.
4. When returning fire, aim directly at its source; do not spray your fire into a general area.
5. Cease firing when the threat is over.
6. Allow anyone trying to surrender to do so.
7. Treat innocent civilians with respect.

B. Sample Statement of Work Contract.

The following contract was prepared by Joint Task Force Provide Comfort during that humanitarian effort."

Statement of Work Contract

SERVICES NON-PERSONAL: Provide services consisting of the right to enter the below described property and use it for humanitarian relief operations to (e.g. aid displaced Kurdish civilians). Services will be provided for the period of _____ through _____.

1. (I/We), _____, hereinafter referred to as the contractor, as owner(s)/occupier(s) of the property described at Attachment A, hereby incorporated by reference, located at _____, agree to provide to the United States Department of Defense (U.S.), and/or its assignee, services consisting of the right to enter and use the land under the following conditions:

a. Although the property remains under the control of contractor, the contractor will not interfere with the operations of the U.S., and/or its assignee, or in any way impede their administration and use of the property, as they may deem appropriate.

b. The contractor retains the right, with prior notice and

approval by the United States and/or its assignee, to enter, exit, and use the property with its invitees and guests, so long as such entry, exit, or use of the property does not interfere with the operation or administration of the property by the United States, and/or its assignee, or affect the security of displaced civilians.

c. Consideration for these services is based on the value of services provided, in the amount specified on page one of this contract.

d. The United States and/or its assignee shall have the right to terminate this contract early. The United States and/or its assignee will use its best efforts to return the land in the condition prior to entering into this contract; normal wear and tear, loss of crops, natural disasters, acts of third parties, access road and water or other improvements, excepted.

e. The contractor hereby warrants that it is either the owner of the property, the authorized tenant/user of the property, or an authorized agent of the above.

2. The contractor agrees that this contract represents an equitable payment for all services provided, and releases the United States and/or its assignee from all claims and judgments arising under or related thereto, by any person or entity for any cause, now and in the future.

C. Sample Assignment of Service Contract.⁹⁸

This agreement . . . , , between the United States Department of Defense, herein called the Assignor, and the United Nations (e.g. High Commissioner for Refugees), herein called the Assignee.

Whereas, the Assignor on _____, _____, entered into a contract with _____ (contractor), for services consisting of the right to enter the contractor's property and use it for humanitarian relief operations to aid (e.g. displaced Kurdish civilians), upon the terms set forth in the original contract attached hereto; and

Whereas, the contract by its terms is assignable, and the Assignee desires to acquire the rights therein.

The Assignor hereby assigns to the Assignee all its interest in the contract.

Contracting Officer

Date

C. Sample Receipt for Seized Property

Receipt for Seized Property"

Territory	Date	Number
-----------	------	--------

To be issued to owners of private property when their property is seized by the United States Armed Forces while in an

area of occupation. Presentment of the attached receipt is mandatory in order for the property owner to be compensated or have the property restored. _____

1. Name and Address of Owner _____
2. Nationality of Owner _____
3. Name and location of property _____
4. Time/Date taken into control _____
5. Reasons for control _____
6. Description of property _____
7. Condition of property _____
8. Value of property _____
9. Insurance protection (if any) _____
10. Person authorizing the seizure must be in a leadership position of squad leader above (should be a Battalion Commander, if at all possible):

Rank/Name _____ Position _____

ssan: _____ unit _____

Signature of person authorizing seizure _____

11. Name of person who actually seized property if different than person who authorized it _____

Release (Back to Owner) Information

1. Date released from custody _____
2. Authority for release _____
3. Released by _____

4. Property released to _____
5. Remarks _____

Original copy goes to property owner

Copy goes to Brigade Headquarters

D. Others.

Another excellent source for sample documents is Appendix C of U.S. Department of Army Field Manual 41-10.

1. Curfews. See page C - 17. Note that curfews were used in the four low intensity conflicts.

2. Ordinances. See pages C - 15 and 16 for samples of ordinances for currency and penalties for crimes and offenses.

APPENDIX C

COMBAT/CRISIS TO PEACE CONTINUUM

	COMBAT/CRISIS OPERATIONS	STABILITY OPERATIONS	NATION BUILDING OPERATIONS
HIGH	DOD ACTIVITIES	DOS, OTHER AGENCIES OR INTERNATIONAL ORGANIZATIONS	
LOW			
C O N D I T I O N S	crisis/combat ongoing U.S. military has lead central government weak or nonexistent weak or no law enforcement	limited or no combat/crisis under control U.S. military and other agencies provide assistance growing central and regional governments growing law enforcement	transfer of lead role to domestic government, federal agencies or international agencies reestablished central gov't reestablish domestic law enforcement
	U.S. military has lead; minimum DOS involvement limited to weak government infrastructure	transition from military to DOS lead growing government infrastructure	State Department has lead capable government and infrastructure
C A P A C I T Y			

ENDNOTES

1. James Kent, Commentaries on American Law, I., 1326.

2. For the purpose of this primer, I adopted the definition of "low intensity conflict" and "peacetime contingency operations" found in Joint Publication 3-07, Doctrine For Joint Operations In Low Intensity Conflict based on the belief that the majority of future U.S. military involvements will involve joint forces and be in accord with the Goldwaters-Nicholas Act of 1986. "Low intensity conflict" is defined as a 'political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. Low intensity conflicts are often localized, generally in the Third World, but contain regional and global security implications. Low intensity conflicts are grouped into four operational categories: insurgency and counterinsurgency, combating terrorism, peacekeeping, and contingency operations.

3. The definition of "contingency operations" is subject to much debate and different interpretations. For the purposes of this primer, I choose the definition in of the document cited in footnote 2 above, Chapter V, "Contingency Operations" are defined as operations by U.S. forces that may take place throughout the operational continuum - - during peacetime, in times of conflict, or during war. U.S. Army Field Manual 100-20 and Air Force Pamphlet 3-20 define "Peacetime contingency operations" in Chapter 1 as military operations as diverse as disaster relief, certain types of counter-drug operations, and land, sea, and air strikes.

4. For purposes of this primer, I adopted the continuum theory used by U.S. Southern Command during Operations Just Cause (combat) and Promote Liberty (nation building) that when transitioning from combat operations to nation building efforts there is an interim stage called "stability" operations. See the chart at Appendix C which illustrates my proposed post conflict continuum theory. It is during this stage that stability efforts are initiated, generally by the ground commander using in country assets, while waiting the arrival of supporting resources and guidance from the National Command Authorities which generally occurs during the nation building stage. Memorandum for Commander-in-Chief, U.S. Southern Command, from U.S. Special Operations Command, with supporting briefing concepts, January 8, 1990.

5. Army Field Manual 100-20, Appendix E defines "civil affairs" to include any activity concerned with the relationships between the military forces and the civilian authorities and people in the area. They are the responsibility of military commanders at every echelon. Activities may range from military civic action projects to the exercise of authority that normally

is the responsibility of the local government.

6. National security Strategy of the United States, The White House, August 1991: 1-11.

7. John McCain, US Senator for Arizona, Letter to editor of Defense magazine, dated June 25, 1991. (Retained by the U.S. Army War College and the author.)

8. F.M. 100-20, AF Pam 3-20, Appendix B.

9. In 1967, then President Reagan submitted Additional Protocol II to the 1949 Geneva Conventions to the Senate for ratification. This U.S. action answers the question of whether the basic humanitarian guarantees of Common Article 3 of the 1949 Geneva Conventions apply to non-international conflicts such as revolutions, insurgencies, guerrilla operations, terrorism, and related acts of violence provided the dissident groups are under responsible command and exercise control over such a part of the national territory permitting sustained and concerted military operations or, in effect traditional civil wars. Common Article 3 recognizes the need for basic humanitarian protection for noncombatants and members of armed forces who have surrendered in internal armed conflicts. Specifically, Article 3 provides protection to the sick and wounded; prohibitions to torture, the taking of hostages, humiliating and degrading treatment, and summary judgment for all, and participation by international humanitarian bodies to the internal conflict. By this approach, the U.S. will apply the protection of Common Article 3 to all internal armed conflicts and encourage all other states to do likewise. This coverage, however, does not include internal disturbances, riots, and sporadic acts of violence. See "New Protection for Victims of International Armed Conflicts: The Protocol II by the United States," U.S. Department of the Army Pamphlet No. 27-100-120: Military Law Review, Spring, 1988: 59-82, for a detailed analysis of the application of Common Article 3 to non-international armed conflicts.

10. Department of the Army Pamphlet No. 27-1, Treaties Governing Land Warfare, Hague Convention No. IV Respecting the Laws and Customs of War on Land and Annex Thereto Embodying Regulations Respecting the Laws and Customs of War on Land, 18 October 1907: 5-17. See also Army Field Manual 27-10, The Law of Land Warfare, another authoritative work in this area. It has three research features. The Chapter Index is detailed and is an excellent subject matter reference. The Appendix-Index of Articles (page 194) bridges the Geneva and Hague Convention Articles to references in the Pamphlet. Finally, the Index is very helpful. See also Karl F. Ivey, MAJ, USA, "But Its Only Civilian Property," Special Warfare, Fall 1989: 42-45, and at 44 for a property control matrix which set forth clear rules as to the destruction, confiscation, seizure, requisition, and control

of a belligerent and neutral's property under the law of war.

11. Department of the Army Pamphlet No. 27-1, Treaties Governing Land Warfare, Hague Convention No. V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907: 18-23.

12. Department of Defense Directive 5100.77, DoD Law of War Program, July 1979: 1.

13. Ibid: 2.

14. Army Field Manual 101-5, Staff organization and Operations, Washington, 25 May 1984: 1-3.

15. Daniel Smith, "New Protection for Victims of International Armed Conflicts: The Proposed Ratification of Protocol II by the United States," Department of Army Pamphlet No. 27-100-120: Military Law Review, Spring 1988: 75.

16. Ibid: 77.

17. Lawrence A. Yates, "Power Pack: U.S. Intervention in the Dominican Republic, 1965-1966," Leavenworth Papers No. 15: 97-105. Dr. Yates in "Power Pack" describes the role of American forces in this peacetime contingency and peacekeeping operation. He explains the mission of U.S. forces and the difficulties they encountered: the formation of an American peace force and the way American forces provided the foundation upon which a political settlement was reached.

18. Ibid: 119-123.

19. Ibid: 132-134.

20. Ibid: 134-136.

21. Ibid: 136-140.

22. Robert J. Beck, "The 'McNeil Mission' and the Decision to Invade Grenada," Naval War College Review, Spring 1991: 93-94.

23. Larry Wayne, LTC, USA, "Civil Affairs in Grenada," Special Warfare, October, 1988: 11-12.

24. U.S. Army Judge Advocate General's School, "Just Cause After Action Seminar - Executive Summary," Charlottesville, Virginia, February 1990 (hereinafter referenced as the Executive Summary).

25. Wayne: 12-13.

26. Marc L. Warren, CPT, USA, "Claims Operations In Grenada - After Action Report, " Report to Staff Judge Advocated, Headquarters, XVIII Airborne Corps, Fort Bragg, North Carolina. (Hereinafter referenced as Report to SJA, XVIII Airborne Corps.) During a meeting on October 30, 1983 at the U.S. Embassy in Grenada between military members of the XVIII Airborne Corps Staff, local community leaders, and Dr. Howell, the U.S. Ambassador, Dr. Howell was asked questions concerning disaster relief. When questioned regarding potential claims, Dr. Howell said "That's up to the bureaucratic lawyers." Fortunately, two judge advocates of the XVIII Airborne staff were present and provided a concise and prompt briefing outlining claims procedures. This occurrence also illustrates that on occasions senior officials in federal agencies may not be fully aware of what the U.S. military can do during contingency operations.

27. Rudolph C. Barnes, Jr. MAJ., "Grenada Revisited," The Officer. July 1985: 14-17.

28. The military operation in Grenada resulted in approximately \$2 million in combat damage. Although combat damages can not be compensated under the Foreign Claims Act, relief was provided through an Participating Agency Service Agreement with the Department of State and the Agency for International Development. This agreement enabled the Army to use the other agency's money to compensate Grenadians for combat related damages. Because of this precedent, Panamanians citizens expected compensation for combat damages following Just Cause. U.S. Army, The Judge Advocate General's School, "Just Cause Executive Summary," February 1990.

29. Report to SJA, XVIII Airborne Corps, supra.

30. Thirty percent of Grenada's GNP prior to the People's Revolutionary Government came to power was tourism. A civil affairs reservist who was also the deputy director of tourism for the city of Philadelphia volunteered for active duty to prepare an assessment and plans for the revitalization of the Grenadan tourist industry. Wayne, Ibid: 13-14.

31. Ibid: 12-14.

32. Memorandum for Commander-In-Chief, U.S. Southern Command from U.S. Special Operations Command, subject: Organization of Nation Building Forces, January 8, 1990. (This reference is retained at Headquarters, U.S. Special Operations Command, MacDill AFB, Florida.)

33. The 96th Civil Affairs Battalion, the U.S. Army's only active duty civil affairs unit jumped into Panama at H-hour and all of the 100 or so members were on the ground within the following two days. Donna Miles, "A Real-Life Mission Helping

Real-Life People," Soldiers, April 1990: 7-8.

34. Richard L. Brown, LTC, USA, "A Lesson Learned During Operation Just Cause 'When the Smoke Clears and the Dust Settles'", U.S. Army War College Selected Readings Course 4: Implementing National Strategy, December 1991: 557-561.

35. Over 4100 persons were detained during the first days of Just Cause. These individuals included members of the Panamanian Defense Force and Dignity Battalions, as well as criminals. The decision was made that all detainees would be accorded the rights of prisoners of war under the Geneva Convention until their precise status could be determined. Article 5 tribunals were not used in Panama. Rather, a judicial liaison group was formed consisting of U.S. federal law enforcement agents, military intelligence officers, and representatives of the Panamanian government. Executive Summary, supra.

36. Robin L. Johnson, CPT, USA., "Operation Just Cause After-Action Report," Headquarters, 7th Infantry Division (Light) and Fort Ord. February 16, 1990. (Reference retained in the Office of the Staff Judge Advocate, 7th Infantry Division (Light), Fort Ord and is hereinafter cited as the Johnson memorandum).

37. Michael E. Sainsbury, CPT, USA., "Panama After Action Report," Headquarters, 7th Infantry Division (Light) and Fort Ord. February 21, 1990. After units food items were exhausted, U.S. forces using their money purchased food from the merchants in the Free Zone to feed the needy people.

38. U.S. Special Operations Command memorandum, January 8, 1990.

39. James E. Durkee, CPT, USA., "Just Cause After Action Report," Memorandum for SJA, 7th Infantry Division (Light) and Fort Ord. February 23, 1990. Combat damages were documented in case a claim was made which alleged the loss to be non-combat related. (Reference retained in the Office of the Staff Judge Advocate, 7th Infantry Division (Light), Fort Ord, California.)

40. Johnson, supra.

41. A 7th Infantry brigade deployed officers who were purchasing officers and class A agents. As a consequence, the unit was able to purchase water and road maps, employ labor, and rent vehicles. Johnson, supra.

42. Durkee, supra.

43. Lawrence A. Yates, "Joint Task Force Panama Just Cause - Before and After," Military Review, October 1991: 70-71.

44. This quote is from an unknown civilian relief worker who responded to a complaint of inefficiency by an American Army Reservist during Provide Comfort. See the After Action Report of the 432d Civil Affairs Company at 31.

45. Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict. Reference is contained in the "Readahead for the Civil Affairs Gulf War Symposium." Hosted by U.S. Army Special Operations Command, Fort Bragg, North Carolina, October 25, 1991.

46. Brinkerhoff: 19-21.

47. Ibid.

48. Ibid: 50-59.

49. Mooney, "The Awkward Process of Getting Started" : 1.

50. After Action Report of 354th Civil Affairs Brigade presented at Civil Affairs Gulf War Symposium, Fort Bragg, North Carolina, October 25, 1991.

51. Patrick K. Carlton, COL, USAR, After Action Report "Civil Affairs Staff Activities of the Joint Chiefs of Staff During Operation Provide Comfort - 6 April to 24 July 1991," presented at Civil Affairs Gulf War Symposium, Fort Bragg, North Carolina, October 25, 1991.

52. A good illustration of the civilian organizations lack of planning is a conversation recorded in the After Action Report of the 432d Civil Affairs Company. A soldier from the 432d was overheard by a civilian relief worker complaining about the inefficiency of the Army. The civilian pointed out that, if it weren't for the "inefficiencies" of the U.S. Army, the UN relief effort would have been totally impossible. From the civilian's point of view, the military was a model of efficiency and, and considering the number of refugees being served, a model of speed as well.

53. After Action Report of 354th Civil Affairs Brigade for Operations Desert Storm and Provide Comfort. Reference presented at Civil Affairs Gulf Symposium, Fort Bragg, North Carolina, October 25, 1991.

54. Jimmy D. Ross, LTG, USA, "Building On Today's Successes In Shaping Tomorrow's Army, Army Magazine, October 1991: 14-15.

55. John R. Brinkerhoff, "Waging the War and Winning the Peace: Civil Affairs in the War with Iraq," Office, Chief of the Army Reserve, Washington, August 1991. Reference presented at Civil Affairs Gulf War Symposium, Fort Bragg, North Carolina,

October 25, 1991.

56. See Military Studies Program Paper, Theodore E. Borek, COL., USA., "Legal Services During War," Carlisle Barracks, 1987, where at pages 23-27 the author provides a description of the civil affairs issues and at 29-33 the legal and domestic issues encountered during World War II by civil affairs units.

57. Rudolph C. Barnes, Jr., "Civic Action, Humanitarian and Civic Assistance, and Disaster Relief: Military Priorities in Low Intensity Conflict," Special Warfare, 34-40.

58. U.S. Joint Chiefs of Staff, Joint Publication 3-57: Doctrine For Joint Civil Affairs (Test), Washington, October 1991: v-3. Paragraph 2e of Chapter V recognizes that the majority of civil affairs assist is in the reserve component and suggests that commanders schedule operations around periods of annual active duty. The risk of this approach is that the timing of low intensity conflicts and peace keeping contingency operations cannot be easily predicted. Therefore, the scheduling of reserve civil affairs units for training to meet the operations post conflict stability requirements may not be a viable option for commanders.

59. Dennis C. Barlow, "A Planner's Guide For the Employment of Civil Affairs in Latin America," Winning the Peace: The Strategic Implications of Military Civic Action. Strategic Studies Institute: U.S. Army War College, 1990: 102-104.

60. Barnes, 39-40.

61. The Judge Advocate General's School Executive Summary, supra.

62. Allan W. Keener, COL, USA., "Civil Affairs Operations in Southwest Asia," Headquarters, Department of the Army Perspective.

63. The Judge Advocate General's School Executive Summary, supra.

64. Brinkerhoff: 11.

65. Barlow: 106-107.

66. Brinderhoff: 75-76.

67. U.S. Department of the Army, Field Manual 41-10, Civil Affairs Operations, (Washington, D.C.: Government Printing Office, 1985).

68. The 20 Civil Affairs functional specialties are: civil defense, labor, legal public administration, public education, public finance, public health, public safety, public welfare, civilian supply economics and commerce, food and agriculture, property control, public communications, transportation, public works and utilities, arts, monuments and archives, civil information, cultural affairs, and dislocated civilians. FM 41-10, Appendix A.

69. FM 47-10, Chapter 2.

70. Appendix A, FM 47-10 discusses tasks associated with the 20 functional specialties associated with civil affair units.

71. See Section III, specifically Article 64, of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, found in Department of Army Pamphlet 27-1: Treaties Governing Land Warfare, for a more detailed discussion as to the implementation and administration of rules in an occupied territories.

72. See Section III, Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

73. Articles 18, 19, and 53, Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and Articles 27 and 56, Hague Convention No. IV, Respecting the Laws and Customs of War on Land. Department of the Army Pamphlet, Treaties Governing Land Warfare: 27-1.

74. See Section III, specifically Article 65, Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

75. Frederick B. Wiener, A Practical Manual of Martial Law, Harrisburg, 1940: 1-14.

76. Ibid: 43-51.

77. Frederick B. Wiener, "Martial Law Today," U.S. Department of the Army Pamphlet 27-100-49: Military Law Review Vol 49. Washington, 1970: 105-107.

78. J. Ashley Roach, Capt. USN, "Rules of Engagement," Naval War College Review, January-February 1983: 11-19.

79. Department of the Army, Department of Defense Civil Disturbance Plan: Garden Plot. Washington D.C., February 15, 1991.

80. The Foreign Claims Act authorizes the administrative settlement of claims of inhabitants of a foreign country, or by a foreign country or a political subdivision thereof, against the U.S. the claims may be for personal injury, death, or property damage, but must have arisen outside the U.S. incident to non-combat activities of the Army.

81. During Operations Urgent Fury and Just Cause, claims were asserted from occupancy of real property by U.S. forces. By regulation, the Corps of Engineers is responsible for the leasehold acquisition of real property. Some building owners had demanded rent for the occupancy. Paragraph 10-11p, AR 27-20, prohibits the payment by Foreign Claims Commissions of claims for rent or damage involving the acquisition, use, possession, or disposition of real property; paragraph 5, AR 405-15, authorizes the Corps of Engineers to negotiate retroactive leases and pay such damage.

82. The Commander-In-Chief Initiative Fund is limited to activities defined in 10 U.S.C. 401. Generally, the funding levels are limited to fiscal years and specific activities.

83. During Operation Provide Comfort, airlift costs incurred by the Airlift Services Industrial Fund were billed to the United States Air Force mission account; purchases from Service and Defense Stock Funds was used as the funding responsibility of the component command organization requesting issue of stock funds; purchases on the local economy was the funding responsibility of the component command organization assigned the responsibility for making the purchase; and any operating costs incurred was the funding responsibility of the component command incurring the costs.

84. Under the United Nations Participation Act, the President can direct the obligation of unlimited funds to "provide assistance to an United Nations Activity." The President's authority is delegated to Secretary of State and requires Secretary of Defense concurrence for reimbursement of Department of Defense operations. Funds are normally deducted from yearly United Nations support. This funding authority was used during recent Operations Provide Comfort and Sea Angel.

85. 10 U.S.C. 2547, Excess Department of Defense Stocks for Relief. This authority is limited to items in stock at the time and they must be excess to the agency. Transportation of the items is not included.

86. See 10 U.S.C. 402, Transportation of humanitarian Relief Supplies to Foreign Countries, applies to relief supplies donated by private groups on a space available basis.

87. Interview with Lieutenant Colonel John Burton, Office of the Chairman of the Joint Chiefs of Staff, Legal Counsel, Washington D.C. on 18 March 1992. The primary references discussed were the United Nations Participation Act; 10 USC 401, Humanitarian and Civic Assistance; Commanders-In-Chief Initiative Fund; Title II and Section 8021, Fiscal Year 1991 Department of Defense Appropriation Act; 10 USC 402, Transportation of Humanitarian Relief Supplies to Foreign Countries; and 10 USC 2547, Excess Department of Defense Stocks for Relief, and how these references provide funding authority for contingency operations, humanitarian, and civic assistance operations.

88. After Action Report for Operation Provide Comfort, Combined Task Force, U.S. European Command, Fall 1991.

89. During Operation Provide Comfort, the procurement by contract of goods or services for refugees that could not be funded by Title 10, section 7 of the United Nations Participation Act was used. The construction of relief facilities for refugees is not military construction as defined by 10 U.S.C. 2801. These construction costs can be either funded by: (a) As a draw down of defense down of defense articles and services under 506 (A) (2) and 552 of the Foreign Assistance Act (to the extent in-house personnel and DoD owned material is used); (b) procure goods and services using O&M funds with the funds provided by the Service Department tasked; and (c) for off-shore procurement, construction contracting in support of U.S. forces (or NATO forces under NATO Mutual Support Act), the Service Department element tasked by the Commander-In-Chief.

90. Foreign Assistance Act of 1961, 75 Stat. 424-42 (codified as amended 22 U.S.C. sect. 2301 to 2349 (1988)).

91. Ibid.

92. Billie E. Braswell, "Grenada, The Big Bucks of Operation Urgent Fury," Soldier Support Journal. July/August 1984: 5-13.

93. Ibid: 8.

94. During Operation Provide Comfort, payments to local contractors, translators, and others was with U.S. dollars because there was no official market value rate of exchange for the Iraqi dinar. Although, some local contractors were paid in Iraqi dinar because if they were found in possession of U.S. dollars by Iraqi police, the money might be confiscated or their lives threatened. See After Action Report Operation Provide Comfort, Combined Task Force. United States European Command, Fall 1991.

95. See Morrison v. United States, 203 Ct. Cl. 692, 492 F. 2d 1219 (1974), for an excellent discussion of the law as to captured or abandoned property found on the battlefield and the theory of agency as it applies to American military personnel who find the property.

96. On 1 February 1990, Operation Just Cause terminated and Operation Promote Liberty began. These peacetime Rules of Engagement became in effect at that time. See After Action Report for Operation Just Cause, Office of the Staff Judge Advocate, Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California, 16 February 1990.

97. See After Action Report of Operation Provide Comfort, Combined Task Force, United States European Command, Fall 1991.

98. Ibid.

99. Suggested form developed by 7th Infantry Division (Light) during Operations Just Cause and Promote Liberty. See After Action Report for Operation Just Cause, Office of the Staff Judge Advocate, Headquarters, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California.

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